

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:

Torch Energy Advisors Incorporated)
(herein "Torch"), Coal Mountain Mining)
Company Limited Liability Partnership)
LLP f/k/a Coal Mountain Mining Company)
and as Coal Mountain Trust (herein Coal)
Mountain") and the following Ernest)
Addison Heirs: Ralph Addison, Gayle)
Henderson, Helen McGrady, Joe Addison,)
and Evelyn Massey (herein collectively)
"Addison Heirs") (Torch, Coal Mountain)
and Addison Heirs sometimes collectively)
referred to as "Applicants"))
)

DOCKET NO.
VGOB 92/02/8-0184-02

RELIEF SOUGHT:

Issuance of a Third Amended Supplemental)
Order Amending Prior Orders Affecting)
SLW6 Drilling Unit to Provide: (1) for the)
Calculation of Those Funds the)
Unit Operator Deposited into the Escrow)
Account for Tracts 19 and 27A of the SLW6)
Drilling Unit;)
(2) to Provide to Applicants a Royalty)
Accounting;)
(3) Disbursement to Torch and Coal)
Mountain in Accordance with Their)
Agreement all of Those Funds Deposited)
by the Unit Operator into the SLW6 Escrow)
Account for Tract 19; and)
(4) Disbursement to Torch and the Addison)
Heirs in Accordance with Their Agreement)
All of Those Funds Deposited)
by the Unit Operator into the SLW6 Escrow)
Account for Tract 27A)
)

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on July 20, 1999 at the Dickenson Conference Room, Southwest Virginia Education 4-H Center, Abingdon, VA.
2. **Appearances:** Sandra Fraley of the firm Penn Stuart appeared on behalf of the Applicants; Pocahontas Gas Partnership (herein "PGP" or "Unit Operator"); and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account for each of the coalbed methane gas drilling units established by the Board through its pooling orders, and that the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow account. Further, the Board finds: (1) that it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed

Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, (2) that it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, but (3) pursuant to Va. Code § 45.1-361.22.A.5, the Board does have jurisdiction and authority to disburse funds from the Escrow Account provided the Board has been provided with (a) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or (b) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4. Prior Proceedings:

4.1. Drilling Unit Number SLW6 was created by Board Order effective as of February 18, 1992, Docket No. VGOB 92/01/21-0180 as amended by Board Orders in VGOB Docket Nos. 93/06/22-0385 and 95/04/18-0498 (herein "Subject Drilling Unit") in the Hurricane Magisterial District, Buchanan County, Virginia (herein "Subject Lands"). At the Board's hearing on February 18, 1992, for Docket No. VGOB 92-02/18-0184, in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board granted the relief sought by PGP and executed an Order dated April 29, 1992 and filed May 1, 1992 with the Clerk of the Circuit Court of Buchanan County, VA in Deed Book 390 at Page 677 pooling all interests in the Subject Drilling Unit for the production of gas produced from coalbeds and rock strata associated therewith below the Tiller seam (herein "Coalbed Methane Gas" or "Gas") from active gob areas from a longwall panel and its surrounding area in Consolidation Coal Company's Buchanan No. 1 Mine (herein "Subject Formations") all pursuant to: (1) the permit provisions contained in Section 45.1-361.27 *et seq.*, Code of Virginia, 1950 as amended; (b) the Oakwood Coalbed Gas Field Order No. OGCB 3-90 dated May 18, 1990; (c) the Board's Order No. VGOB No. 92/01/21-0180 dated as of February 18, 1992; (d) §§480-05-22.1 *et seq.*, Gas and Oil Board Regulations; and (e) §§ 480-05-22.2 *et seq.*, Virginia Gas and Oil Board Regulations, all as amended from time to time (herein "Pooling Order"). The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections entered in VGOB Docket No. 92-02/18-0184 executed on April 4, 1996 and filed on April 17, 1996 in Deed Book 447 at Page 810 (herein "Supplemental Order"); by the Board's Amended Supplemental Order Regarding Docket Number VGOB 92-02/18-0184 executed June 26, 1998 and filed July 14, 1998 in Deed Book 478 at Page 712 (herein "First Amended Supplemental Order"), and by the Board's Amended Supplemental Order Regarding Docket Number VGOB 92-02/18-0184-01 executed April 7, 1999¹ (herein "Second Amended Supplemental Order"). The Board named PGP as the Unit Operator of Subject Drilling Unit. By letter dated June 25, 1999 the Board noticed the Applicants, the Unit Operator and the Escrow Agent of its intention to hear this matter on July 20, 1999, ordered the Unit Operator to file with the Board an accounting of funds placed on deposit in the escrow account for the SLW6 Drilling Unit attributable to Tracts 19 and 27A, and ordered the Unit Operator and the Escrow Agent to reconcile their accountings with respect to same (herein "Accounting Order").

4.2. As instructed by the Board through the Pooling Order, the Supplemental Order, the Amended Supplemental Orders, the Escrow Agent established the Escrow Account for Subject Drilling Unit (herein "Escrow Account"), and thereafter the Escrow Agent periodically received from the Unit Operator for deposit into the Escrow Account proceeds which were designated by the Operator through its royalty statements as being attributable to various tracts identified in the attached Exhibit E and the attached Accounting. By letter dated June 25, 1999, the Board ordered PGP to file with the Board an accounting of funds on deposit in the Escrow Account attributable to Tracts 19 and 27A (herein "Accounting Order").

¹ Pursuant the Second Amended Supplemental Order executed April 7, 1999 funds attributable to Tracts 20, 22, 24, 25, 27C and 27D of the SLW6 Drilling Unit were disbursed to Torch and Pocahontas Gas Partnership. By Board order executed February 17, 1999 in VGOB Docket No. 97-05/20-0581 funds attributable to Tract 26 of the SLW6 Drilling Unit were disbursed to Torch and Garden Realty Corporation.

4.3. Applicants' seek a royalty accounting, determination of the funds on deposit in the Escrow Account for Tracts 19 and 27A of Subject Drilling Unit, and disbursement to Torch and Coal Mountain all such Escrowed Funds attributable to Tract 19 pursuant to their written agreement, and disbursement to Torch and the Addison Heirs all of the Escrowed Funds attributable to Tract 27A pursuant to their written agreement. The Applicants warranted and represented to the Board that:

- (1) Hugh Macrae Land Trust (herein "Trust") is the sole owner of the coal estate underlying Tracts 19 and 27A of the SLW6 Drilling Unit, however, by Assignment and Bill of Sale dated December 29, 1997 (herein "Assignment") Trust assigned to Torch its conflicting coalbed methane gas royalty interest in said tracts including all its interest in the funds on deposit in the Escrow Account which the Unit Operator attributes to Tracts 19 and 27A;
- (2) Coal Mountain is the sole owner of oil and gas estate underlying Tract 19 of the SLW6 Drilling Unit;
- (3) Notwithstanding the Operator's representations contained in Exhibit E of the Pooling Order and Supplemental Orders, a copy of which is attached hereto, that the Addison Heirs are the owners of an undivided two-thirds (2/3) interest in the coal estate underlying Tract 27A of the SLW6 Drilling Unit and that Myrtle Addison is the owner of the remaining undivided one-third (1/3) interest in said coal estate, an Addison Heir testified at the hearing that Myrtle Addison, mother of the Addison Heirs, is now deceased and that the Addison Heirs now own all of the coal estate underlying Tract 27A of the SLW6 Drilling Unit²;
- (4) that together Trust and Coal Mountain claim to have and own, in the aggregate, the following Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 19 and the terms of their leases pertaining to same, and that Trust has assigned to Torch its interest in funds deposited by the Unit Operator into the Escrow Account established by the Board for the SLW6 Drilling Unit with respect to said tract:

| Tract # | Acres | Interest in Unit | Funds On Deposit As of 6/30/99 |
|---------|--------|------------------|-----------------------------------|
| 19 | 32.476 | 17.46820% | \$60,213.63 |

- (5) that together Trust and the Addison Heirs have and own in the aggregate the following conflicting Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 27A and the terms of their leases pertaining to same, and that Trust has assigned to Torch its interest in the escrowed funds deposited by the Unit Operator into the Escrow Account established by the Board for the SLW6 Drilling Unit with respect to said tract:

| Tract # | Acres | Interest in Unit | Funds On Deposit As of 6/30/99 |
|---------|-------|------------------|-----------------------------------|
| 27A | 2.563 | 1.37859 | \$4,917.68 |

- (6) that while at the time of the entry of the Pooling Order, as amended, Trust and Coal Mountain had conflicting claims of ownership in Tract 19, subsequent to the entry of the Pooling Order, Trust, Torch and Coal Mountain entered into a Split Agreement whereby Torch and Coal Mountain are each entitled to receive a sum equal to fifty percent (50%)

² The Operator acknowledged that it had been provided with proof that Myrtle Addison is deceased and that her undivided one-third interest in the coal estate is now held by the Addison Heirs. The Operator agreed to amend its Exhibit E accordingly.

of funds due pursuant to the terms of their leases, including, but not necessarily limited to such funds on deposit in the Escrow Account;

(7) that while at the time of the entry of the Pooling Order, as amended, Trust and the Addison Heirs had conflicting claims of ownership in Tract 27A, subsequent to the entry of the Pooling Order, Trust and the Addison Heirs entered into a Split Agreement whereby Torch and the Addison Heirs are each entitled to receive a sum equal to fifty percent (50%) of the funds due pursuant to the terms of their leases, including, but not necessarily limited, to such funds on deposit in the Escrow Account;

(8) Applicants have represented to the Board that notice of their Application was given in accordance with Va. Code 45.1-361.19, and the Board received no objections to it.

4.4. In compliance with the Accounting Order, PGP presented to the Board an accounting of funds deposited into the Escrow Account for Tract 19 and Tract 27A, including interest accruing thereon and fees charged to the Escrow Account and with a reconciliation of PGP's records of Escrowed Funds to the records of the Escrow Agent, a copy of which accounting is attached hereto as Exhibit A (herein "Accounting").

4.5. The Applicants represented to the Board that they were provided with a copy of the Accounting, have reviewed same, and that Applicants are in agreement that the sums set forth in Paragraph 4.3(4) and 4.3(5) above accurately reflect the Escrowed Funds attributable to Tracts 19 and 27A of Subject Drilling Unit. Torch and Coal Mountain seek disbursement to them, in the aggregate, the sum of \$60,213.63, plus interest and less fees accruing since the date of the Accounting, from the Escrow Account for the SLW6 Drilling Unit. Torch and the Addison Heirs seek disbursement to them, in the aggregate, the sum of \$4,917.68, plus interest and less fees accruing since the date of the Accounting from the Escrow Account for the SLW 6 Drilling Unit.

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.

5.2 The Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and the Applicants. The Operator and the Applicants have acknowledged such limitation and have, therefore, agreed that no such party will argue or contend in other pending or future proceedings or actions inter se (including without limitation Levisa Coal Company, et al. v. Consolidation Coal Company, et al., Civil Action No. 97-0117-A pending in the United States District Court at Abingdon) that the findings and/or order of the Board herein bar their assertion of any claims or defenses, including payment, or otherwise constitute a waiver or an estoppel in such other proceedings or actions.

5.3 Notwithstanding the fact that Trust is challenging PGP's royalty calculations and/or payments under the terms of its voluntary lease with PGP, Trust has assigned its right to the escrowed funds to Torch and Trust has entered into a Split Agreement with Coal Mountain and with Addison Heirs whereby they have agreed to split on a 50/50 basis royalties attributable to their respective conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas underlying Tracts 19 and 27A of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by PGP in the Escrow Account which are attributable to said tracts. Based upon the Split Agreements, the Applicants', through their application herein, seek among other things, disbursement to them in accordance with the terms of the Split Agreements those funds set forth in 4.3(4), 4.3(5) and 4.5 above.

5.4 According to the Pooling Order, the Supplemental Order, the Amended Supplemental Order, the Second Amended Supplemental Order, the Accounting and the Application filed in this matter: (a) the funds deposited by PGP into the Escrow Account for Subject Drilling Unit consists of payments calculated by PGP to be due those persons identified in Exhibit E hereto and (b) PGP has represented to the Board through the Accounting that as of June 30, 1999 the funds set forth in Paragraphs 4.3(4), 4.3(5) and 4.5 above are those funds on deposit in the Escrow Account which are attributable to Tracts 19 and 27A all as more particularly reflected in the Accounting, and (c) Applicants have made the warranties and representations to the Board set forth in Paragraph 4.3 above.

6. **Relief Granted:**

For the reasons set forth in Paragraphs 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to disburse via wire transfer in accordance with instructions provided to the Escrow Agent by Applicants' counsel's: (1) the sum of \$32,565.65, plus any additional payments and interest and less fees which accrue thereon from the date of the Accounting through the date of disbursement, to Torch Energy Advisors Incorporated; (2) the sum of \$30,106.81, plus any additional payments and interest and less fees which accrue thereon from the date of the Accounting through the date of disbursement, to Coal Mountain Mining Company Limited Partnership LLP, f/n/a Coal Mountain Mining Company and as Coal Mountain Mining Trust; and (3) the sum of \$491.77, plus any additional payments and interest and less fees which accrue thereon from the date of the Accounting through the date of disbursement, to each of the following Addison Heirs: Ralph Addison, Gayle Henderson, Helen McGrady, Joe Addison, and Evelyn Massey. Further, the Amended Supplemental Order filed in this cause is hereby modified to delete the requirement that lease payments attributable to Applicants' conflicting coalbed methane gas ownership interests in Tracts 19 and 27A be deposited by PGP into the Escrow Account. To the extent not specifically granted herein, any other or further relief is denied.

7. **Conclusion:**

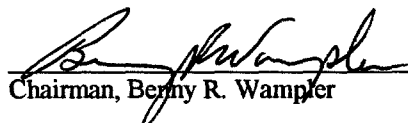
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

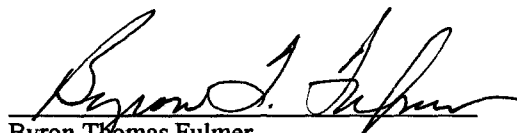
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 17th day of August, 1999, by a majority of the Virginia Gas and Oil Board.



Chairman, Benny R. Wampler

DONE AND PERFORMED this 20th day of August, 1999, by an Order of this Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

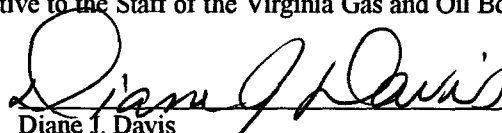
Acknowledged on this 17th day of August, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 20th day of August, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires: September 30, 2001